IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6814 OF 2005

Shantaram Sonu Utekar ..Petitioner

Vs.

Shripal G. Jain and ors. ..Respondents

Mr. P.J. Thorat i/by Mr. R.A. Thorat for petitioner.
Mr. Sameer Tendulkar for respondent nos.1 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2007.

P.C.:

1. Heard Mr. Thorat the learned counsel for the petitioner and Mr. Tendulkar the learned counsel for the respondent nos.1 to 4.

2. In this petition filed under Article 227 of the Constitution, the petitioner - original defendant no.1 has challenged the order passed by the Division Bench of the Small Causes Court on 22/8/2005. The defendant had taken out Interim Notice No. 701 of 2005 on 21/2/2005 for restoration of the application

which was filed on 28/4/2003 before the trial court praying for permission to deposit the rent and the said application was dismissed on 6/8/2003. In the Interim Notice, a separate application for condonation of delay was not filed and, therefore, the trial court discharged the Interim Notice. The petitioner, therefore, filed Revision Application No.178 of 2005 which also has been dismissed by the Division Bench of the Small Causes Court by the impugned order. The Division Bench referred to a Judgment of this court in Ballumal A. Jaisingh Vs. M/s. J.J. Builders and Ors. [2003 (3) Mh.L.J. 238] in support of its observations that it was necessary for the defendant no.1 to file an application for condonation of delay caused in taking out Interim Notice No.701 of 2005 for restoration of the earlier application.

3. The learned counsel for the petitioner relied upon the decision of the Madhya Pradesh High Court (Single Bench) in the case of Shankar vs. Indore Municipal Corporation and ors. [AIR 1996 M.P. 154]. The view taken by both the courts below cannot be

termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution. However, the petitioner-defendant no.1 has to be given liberty to file a separate application for condonation of delay in support of the Interim Notice before the trial court and if such an application is presented within two weeks, the petitioner should be heard.

4. Hence the petition is rejected, but with liberty to the petitioner to move an application for delay condonation in Interim Notice No. 701 of 2005. If such an application is filed within a period of two weeks from today, the court concerned shall decide the same on its own merits.

(B.H. Marlapalle,J.)